COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Rulemaking, Pursuant to )

G.L.c. 164, and c. 25, to )

Establish Rules Regarding ) D.T.E. 98-32-E

The Unbundling of Services )

Related to the Provision )

Of Natural Gas )

The Associated Industries of Massachusetts ("A.I.M.") hereby submits its Reply Comments regarding establishing rules governing the unbundling of services related to the provision of natural gas. A.I.M. will not repeat what was stated in our Initial Comments. We will take this opportunity to submit examples of customers who would fall below or at the 7000 therm threshold and reply to the Comments of Reliant Energy, ALLEnergy, Dynegy Marketing and Trade, Statoil Energy, and the Attorney General.

As indicated in our Initial Comments, we believe that the right to rescind threshold should be raised from 5000 to 7000 therms to assure that all small commercial and industrial customers (C&I) receive adequate protections. In surveying our members whose yearly usage range between 5000 and 7000 therms, we found that many of these companies were quite small ranging in size from 8 to 90 employees. In a large majority of these companies, there was no energy manager or any individual with expertise in the energy area. Moreover, in surveying our members with annual usage thresholds between 8500 - 9500 therms, a large number of these companies had 25 to 35 employees. Therefore, we believe that a 7000 therm threshold is a legitimate middle-ground compromise as there will be a significant number of C&I customers who will be over the 7000 therm threshold who have had no experience with competitive markets. It is within the Department's judgement whether the threshold could in fact be a higher number.

In the Oral Comments of ALLEnergy, though there was no objection to the increase of the threshold, there was an alternative approach recommended. This alternative method would waive the three day rescission period for customers with a "custom deal." A custom deal is, as described by AllEnergy, specific to a customer's particular load profile. A.I.M. believes that in order for this approach to work, a "custom deal" would have to be fully defined by the Department. Without a clear definition, a supplier could claim that

every deal was a "custom deal" and thus circumvent a customer's three day right to rescind. A.I.M. believes, therefore, that the increase in the threshold is the best mechanism to protect small C&I customers.

Regarding the Initial Comments of Reliant Energy, A.I.M. finds a number of their suggestions contrary to Legislative intent producing consumer "unfriendly" provisions.

First, Reliant suggests that there should be a step before the "Letter of Authorization" stage. The "Letter of Authorization" is used to authorize the release of usage information for each customer. A.I.M. believes that a pre-enrollment process[(1)], with a "negative check off" system is not only confusing but is a serious step backwards for small customer consumer protections. An "affirmative" process should always be used when dealing with such an important commodity as natural gas. A customer should understand what he or she is signing and the implications of doing so. A "Letter of Authorization" is a clear and understandable document in which the customer *affirmatively* chooses to release usage *information* and is under no obligation to sign a contract with a supplier.

Secondly, Reliant suggests that if a customer decides to exercise his or her rights under the three day rescission period, such notification should be delivered to the LDC. A.I.M. believes that this procedure is inconsistent with the routine method used in the electric industry and is not practical. Typically, when an agreement is reached between the customer and supplier, the agreement is mailed to the customer and from the point of receipt, the customer has three days to contact the suppler if an election is made to rescind the contract. In fact, during this time the customer may not have any contact with the LDC. It would be confusing to a customer to contact the LDC, who is not a party to the contract and is not the firm the customer has been dealing with, if a decision is made to rescind. A.I.M. believes that contact should be made to the supplier, not to the LDC. This would follow the practice within the electric industry.

Thirdly, Reliant suggests that under the provision for refunds as a remedy for unauthorized service, that "net" not gross revenue is the appropriate compensation. This proposed language is inconsistent with the electric industry provisions and contrary to that Legislative intent. This provision was drafted by the Legislature to deter slamming. It is a punitive measure and therefore actual damages is not an appropriate remedy. The offending supplier or retail agent should be well aware that slamming is not tolerated in Massachusetts. A punitive measure, therefore, is the only way to send this clear message.

Lastly, A.I.M. agrees with Reliant that electronic transfer of data will, in time, be a viable option to customers. Therefore, we agree that giving the customer the ability to electronically communicate with a supplier, as long as it is an option and not a requirement, should be available.

Regarding the Comments of ALLEnergy, Dynegy, and Statoil in reference to thresholds, we believe that if a threshold is used within any specific provision that the threshold should be 7000 therms, or higher if the Department so determines. This will provide consistency within the regulatory framework. Thus, where the suppliers' recommend a

threshold of 5000 therms for customers requiring notification that no more than one supplier may be designated to provide service to a meter or group of meters at a specific location, the threshold should be raised to 7000, not only for consistency, but to provide adequate consumer protections in this area.

Finally, A.I.M. supports that Comments of the Attorney General which address Notice of Termination. As correctly stated by the Attorney General, the proposed language is not consistent with the electric industry provisions and places customers at a serious disadvantage.

In conclusion, as indicated in our Oral Testimony, a supplier should have a heavy burden when recommending changes within the natural gas industry regulations that are inconsistent with parallel electric industry regulations. We do not believe this showing has been made and consistency should be a goal in the regulations governing the unbundling of the gas industry. We appreciate the opportunity to participate in this rulemaking procedure. A.I.M. believes that the unbundling of the gas industry can provide substantial and valuable benefits to customers and can be accomplished together with important and adequate consumer protections.

RESPECTFULLY SUBMITTED

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1. Reliant's Comments state that an attached appendix would contain a pre-enrollment form. This appendix was not attached to Reliant's Comments and, therefore, A.I.M. can not comment specifically on the pre-enrollment form.